

REMARKS

I. Introduction

In view of the above amendments and the following remarks, reconsideration of the rejections contained in the Office Action of October 7, 2008 is respectfully requested.

By this amendment claims 1-11 and 14-18 have been amended. Claims 1-11 and 14-19 are now pending in the application. No new matter has been added by these amendments.

The specification has been reviewed and revised. No new matter has been added by these revisions. Entry of the specification amendments is thus respectfully requested.

II. Claim Construction

The Office Action details, at item 3 on page 2, the treatment of alleged intended use statements in the independent claims 1, 10, and 18 in which a bulk of those claims is given “no patentable weight.” Applicants submit that this treatment is incorrect. Preambles are sometimes not afforded patentable weight. MPEP 707.07(f) (“... the recitation has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone.”) Applicants are unaware of any support in the MPEP, case law, or any other authority for the interpretation that limitations in the body of a claim, as opposed to the preamble, can be afforded no patentable weight. It is requested that the Examiner cite the authority supporting this interpretation. Even when intended use statements are made, the prior art applied must be

capable of performing the intended use. MPEP 2111.02 (“If a prior art structure is capable of performing the intended use as recited in the preamble, then it meets the claim.”); see also *In re Schreiber*, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997) (anticipation rejection affirmed based on Board’s factual finding that the reference dispenser, a spout disclosed as useful for purposes such as dispensing oil from an oil can, would be capable of dispensing popcorn in the manner set forth in appellant’s claim 1, a dispensing top for dispensing popcorn in a specified manner.) Because the portions of claims 1, 10, and 18 appear in the body of those claims, they are functional claim limitations, not intended use statements. Functional claim limitations also require the prior art applied to be capable of performing the recited function. MPEP 2173.05(g).

The Office Action, at item 5 on page 4, states that “wherein” is considered to be intended use language. The Examiner cites MPEP 2111.04, which addresses “wherein” clauses. Applicants could find no support in the MPEP, case law, or any other authority for the interpretation that “wherein” is an intended use statement. To the contrary, MPEP 2111.04 provides that wherein may indicate optional claim language, but that “The determination of whether each of these clauses is a limitation in a claim depends on the specific facts of the case.” In the present case, “wherein the information on the resource use device...” refers back to the previously recited “a storage unit being operable to store information on the resource use device...” The wherein clause in the present case further limits positively recited structure and does not merely suggest or make optional certain claim language. As such, Applicants submit that the interpretation of claim 10 giving no patentable weight to the ‘wherein’ clause is incorrect.

III. Prior Art Rejections

Currently, claims 1-5, 8-11, 14 and 17-19 stand rejected under 35 U.S.C. § 102(b) as being unpatentable over Arazi et al. (US 2001/0041594), claims 6, 7, 15, and 16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Arazi et al. in view of Xu et al. (US 6,151,628).

As mentioned above, Applicants disagree with the interpretation of the bulk of claims 1, 10, and 18. In an effort to advance prosecution, and without agreeing to the propriety of the Examiner's rejection, those claims have been amended to delete the term "for." It is submitted that those limitations are now clearly functional, and any prior art cited must be capable of performing the claimed function in order to meet those limitations.

Claim 1 is patentable over Arazi et al. because it requires an access control device, in part, a communication unit that communicates with the access control device and the resource use device, an access permission unit that instructs the resource providing device via the communication unit to permit an access from the resource use device, and an access discard unit that instructs the resource providing device via the communication unit to reject an access from the resource use device upon a determination by the existence check unit to disconnect communication with the resource use device.

Arazi et al. discloses a wireless private branch exchange (WPBX) including handsets, several base stations, and a switch. In the Office Action, a handset 133 is asserted as the resource use device, a base station 124 is asserted as the resource providing device, and the switch 129 is asserted as the access control device, with a citation to Figure 2 of Arazi et al. However, as seen in Figure 2, the base station 124 does not "provide" the communication link 134; as such, Arazi does not meet the limitation "using a resource provided by the resource providing device" recited

in claim 1. The Office Action further asserts that the Switch 129 includes a communication unit for communicating with the resource use device and the resource providing device. However, as seen in Figure 2, switch 129 does not communicate with handset 133; as such, Arazi et al. does not meet the limitation “a communicating unit that communicates with the resource use device and the resource providing device.” Instead, the switch 129 of Arazi et al. merely connects the three base stations, as seen in Figure 2; the switch 129 is incapable of communicating with the handset 133.

Further regarding claim 1, the Office Action asserts that the switch 129 includes an access permission unit for instructing the resource providing device (asserted as base station 124) to permit an access from the resource use device (asserted as handset 133). The switch 129 or Arazi et al., however, has no impact on the access to the base station 124 from the handset 133. Stated another way, handset 133 has access to base station 124 via wireless link 134 regardless of any state of switch 129; as such, Arazi et al. does not meet the limitation of claim 1 “an access permission unit that instructs the resource providing device via the communication unit to permit an access from the resource use device.” The passage cited in the office action regarding this limitation states that the switch checks an internal memory when a new call is initiated, and does not disclose any instruction from the switch to the base station 124 to permit access from the handset 133.

Still further regarding claim 1, the Office Action asserts that the switch 129 includes an access discard unit for instructing the resource providing device (asserted as base station 124) to reject access from the resource use device (asserted as handset 133). No passage could be found in Arazi et al. disclosing the switch 129 instructing the base station 124 to reject access from the handset 133, and no passage could be found disclosing any base station rejecting access from any

handset. The passage cited in the Office Action at page 6 regarding this limitation discloses a connection with a Gateway being disconnected; it does not disclose the switch instructing the base station to reject access from a handset. As such, Arazi et al fails to disclose the limitation of claim 1 “an access discard unit that instructs the resource providing device via the communication unit to reject an access from the resource use device.”

It is thus submitted that the invention of the current application, as defined in claim 1, is not anticipated nor rendered obvious by the prior art, and yields significant advantages over the prior art. Allowance is respectfully requested.

Claim 10 includes limitations identical to the “communication unit” and the “access permission unit” limitations of claim 1, and is therefore allowable for the reasons set forth above in support of claim 1 with respect to those limitations. Claim 18 includes all the limitations of claim 1, and is therefore allowable for the reasons set forth above in support of claim 1. Claims 2-9, 11, 14-17, and 19 depend, directly or indirectly, from claims 1, 10, and 18, and are therefore allowable at least by virtue of their dependencies.

In view of the foregoing amendments and remarks, inasmuch as all of the outstanding issues have been addressed, Applicants respectfully submit that the present application is in complete condition for issuance of a formal Notice of Allowance, and action to such effect is earnestly solicited.

Should any issues remain after consideration of the within response, however, the Examiner is invited to telephone the undersigned at his convenience.

If any fee beyond that submitted herewith, or extension of time is required to obtain entry of this Amendment, the undersigned hereby petitions the Commissioner to grant any necessary time extension and authorizes charging Deposit Account 23-0975 for any such fee not submitted herewith.

Respectfully submitted,

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ABSTRACT

~~Has~~ The present invention has an object of discarding an access permission to be discarded quickly, thereby preventing illegal use of a device providing resources. A communication unit 101~~unit~~ communicates with a resource use device 30~~device~~ and a resource providing device 20~~device~~. An access permission unit 106~~unit~~ instructs the resource providing device 20~~device~~ to permit an access from the resource use device 30~~device~~. A storage unit 103~~unit~~ stores information on the resource use device permitted to access as management information. The existence check unit 107~~unit~~ checks a communication state with the resource use device 30~~device~~, the management information of which is stored in the storage unit 103~~unit~~. The access discard unit 108~~unit~~ instructs the resource providing device 20~~device~~ to reject an access from the resource use device 30~~device~~, communication with which is determined to be disconnected by the existence check unit 107~~unit~~.